

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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FORD MOTOR CREDIT COMPANY LLC f/k/a FORD MOTOR  
CREDIT COMPANY,

Plaintiff,

vs.

McCARTHY ACQUISITION CORPORATION d/b/a McCARTHY  
FORD, ANTHONY T. McCARTHY, BERNADETTE McCARTHY,  
WINCHESTER AUTO RETAIL, INC., MPDK, LLC d/b/a ADOBE  
CAR & TRUCK RENTAL OF TUCSON, ADOBE CAR AND VAN  
RENTAL OF TUCSON and/or ADOBE CAR AND VAN RENTALS,  
LLC, AFL SERVICES, INC. d/b/a AFL CO., THOMAS J. PIERONI,  
BENTLEY HOLDINGS INC. d/b/a AFL CO.,

Defendants.

and

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THOMAS J. PIERONI, WINCHESTER AUTO RETAIL, INC., MPDK,  
LLC d/b/a ADOBE CAR & TRUCK OF TUCSON, ADOBE CAR &  
VAN RENTAL OF TUCSON and/or ADOBE CAR AND VAN  
RENTALS, BENTLEY HOLDINGS, INC. d/b/a AUTOMOTIVE  
FLEET LEASING CO.

Plaintiffs,

vs.

FORD MOTOR CREDIT COMPANY, LLC f/k/a FORD MOTOR  
CREDIT COMPANY

Defendant.

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Civil Action No.:  
1:13-CV-01214-RJA

Erie County  
Index No.: 2007/3254

Civil Action No.:  
1:13-CV-01213-RJA

Erie County  
Index No.: 605086/2012

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### **STATUS REPORT**

Thomas J. Pieroni, Automotive Fleet Leasing Services, Inc., and Bentley  
Holdings, Inc. (the “Pieroni Companies”), by and through their counsel, and pursuant to the  
Court’s prior directives in each of the above-captioned cases, respectfully submits this Status  
Report.

1. On October 4, 2019, the New York State Appellate Division, Fourth Department issued a Memorandum and Order (the “Decision”) that relates directly to the above-captioned cases. A copy of the Decision is attached hereto as **Exhibit A**.

2. As the Court is aware, the above-captioned cases involve the alleged conversion of vehicles purchased from a local dealership for two fleet rental companies. While these cases were pending in New York State Supreme Court (and after that court had ruled on certain summary judgment motions), one of those companies, Winchester Auto Retail Inc. (“Winchester”), filed for bankruptcy. Thus, Ford Motor Credit Company, LLC (“Ford Credit”) removed to this Court all claims involving Winchester. Ford Credit then moved in this Court for reconsideration of that state court ruling. *See* Dkts. 67 and 93. The reconsideration motions remain pending, subject to status reports submitted by the parties. *See, e.g.*, Dkts. 83 and 59.

3. The remaining claims related to the other company, MPDK, LLC d/b/a Adobe Car & Truck Rental of Tucson (“Adobe”), eventually continued in state court. In that case, New York State Supreme Court initially granted Ford Credit’s parallel motion for re-argument, and granted summary judgment in its favor. However, on October 4, 2019, the Appellate Division reversed Supreme Court, holding that issues of fact precluded the granting of summary judgment for any party. In doing so, it decided legal issues identical to, and arising from an identical nucleus of fact as, the claims on the motions for reconsideration before this Court. *See* Ex. A; Dkts. 93, 67. The Appellant Division also remanded the Adobe claims for trial to New York State Supreme Court, which has referred the parties to mediation, and has set a trial date of April 24, 2020.

4. By May of 2018, Winchester—whose bankruptcy served as the basis for Ford Credit’s removal under 28 U.S.C. §§ 1334 and 1452, as well as this Court’s jurisdiction over the removed claims—had settled all claims before this Court and is no longer a party to these cases. *See* Dkts. 118 and 92.

5. Winchester also is no longer in bankruptcy. The Winchester bankruptcy case was closed on December 21, 2018. *See In Re Winchester Auto Retail, Inc.*, No. 13-bk-11677-BFK, Dkt. 107 (E.D. Va., filed in 2013).

Dated: October 28, 2019

**HODGSON RUSS** LLP

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